



Solutions for Schools
& Families

April 15, 2019

Superintendent
c/o General Counsel's Office
Seattle Public Schools
MS32-150
POBox34165
Seattle, WA 98124-1165

Sent via e-mail to < nrtreat@seattleschools.org >

Re: Appeal of Formal Complaint of Discrimination: Harassment and Retaliation

Dear Superintendent Juneau,

This appeal responds to the investigative findings sent April 5, 2019, for the complaint submitted by our client, Christina Ellis, on June 8, 2018. Our grounds for appeal are substantive, but per your procedure we provide a brief statement explaining its basis as follows:

1. Failure to investigate and take accountability for the wrongdoings of Kristin Bailey.

The findings provided to Ms. Ellis provide; "Please be aware that due to Ms. Bailey's departure from the District at the conclusion of the 2017-2018 school year and prior to the completion of this investigation, the District cannot make any conclusive determinations with respect to whether she violated District policy. Consequently, this letter only addresses the allegations with respect to Ms. Sipes." This is unacceptable. The District absolutely maintains a responsibility to thoroughly investigate and adequately respond to problematic behavior by a school administrator that took place on campus during the school year even though that individual has since moved on. Particularly given the excessive delay of this investigation, it is not acceptable for the District to dodge its responsibility regarding allegations of discriminatory and retaliatory conduct by Ms. Bailey.

2. No finding of racially-motivated harassment, intimidation, and bullying.

While the investigation substantiated the allegations of HIB by Thorton Creek teachers against Ms. Ellis, it did not find evidence that the HIB was the result of racially-motivated discrimination or retaliation. The resulting letter to Thorton Creek staff expressly provided, "While there is no evidence to substantiate that these behaviors were motivated by race..." This proposition is entirely inaccurate.

The backlash by Thorton Creek staff was the direct result of Ms. Ellis' work with the Equity Diversity and Inclusivity (EDI) committee and her advocacy in furtherance of racial equity and

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diversity via the Site Council. In her complaint, Ms. Ellis recounted several examples of implicit bias and institutional racism by the Thorton Creek staff. The Director of Racial Equity Advancement for SPS witnesses some of these incidents and agreed the behavior at issue was racially-motivated. Multiple members of the parent community lodged complaints with the former principal stating they were offended by the teacher's clearly racist statements at the site council meeting. This racist behavior persists at Thorton Creek today. Most recently, teachers regularly using terms like "race-baiter" when referring to parents of color who took issue with all the racial incidents at Thorton Creek.

3. Failure to investigate Kienan's 5/8/18 in-school suspension and 5/11/18 short-term suspension as disability retaliation

You did find that the actions of Thorton Creek staff "g[a]ve rise to a reasonable perception by you that Thornton Creek staff acted in concert to retaliate" against Ms. Ellis' son, Kienan. However your investigation failed to consider all adverse actions taken against this child in retaliation for his mother's advocacy. Notably, while the investigation makes repeated reference to Kienan's behavior problems, Kienan did not exhibit these behaviors at his school before Thorton Creek and likewise has not had behavior issues since moving to his new school.

4. No specific disciplinary action to the teachers primarily responsible for the HIB

Finally, the corrective action of a training globally administered to all Thorton Creek staff was insufficient. Notably, my client was repeatedly assured by district administrators that the teachers primarily responsible for the HIB would be transferred away from Thorton Creek in an effort to disassemble the toxic environment at that school. Transfer of those teachers would be a more acceptable corrective action.

For the above reasons – and more that our client is willing to discuss at an in-person interview – we are appealing the April 5, 2019 findings. We ask that the investigation be reopened to address Ms. Bailey's behavior, acknowledge the racially-motivate behavior of the offending teachers, account for all retaliatory actions taken against Kienan, and order an appropriate corrective action in the transfer of the primary bad actors.

Responsive to Ms. Codd's requests, Ms. Ellis and Ms. Briggs are willing to engage in a mediation process with the District in order to resolve this matter and to discuss what steps the District can take to ameliorate the devastating effects that these discriminatory and retaliatory events have had on Ms. Ellis and her family. Please let us know if you would like to discuss resolution in more depth.

Sincerely,

CEDAR LAW PLLC



Lara Hruska, WSBA No. 46531

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April 5, 2019

Delivered via Certified and First Class Mail and Email: penellis@gmail.com

Christina Ellis
3002 NE 89th St
Seattle, WA 98115

Re: Formal Complaint of Discriminatory Harassment and Retaliation

Dear Ms. Ellis,

The purpose of this letter is to inform you that Seattle Public Schools (District) has completed its investigation into a formal complaint you submitted on behalf of yourself and your son, Kienan Ellis (Student A). This letter addresses allegations you raised against your son's 3rd grade teacher Nora Sipes (Respondent) and then-Assistant Principal Kristin Bailey. Please be aware that due to Ms. Bailey's departure from the District at the conclusion of the 2017-2018 school year and prior to the completion of this investigation, the District cannot make any conclusive determinations with respect to whether she violated District policy. Consequently, this letter only addresses the allegations with respect to Ms. Sipes.

The legal issues investigated were as follows:

1. Whether Respondent engaged in discriminatory harassment toward Student A during the 2017-2018 in violation of Policy 3210 and Superintendent Procedure 3210SP.A with respect to the following:
 - a. Her actions and response to Student A uttering a racial slur on or around October 12, 2017;
 - b. Her actions toward Student A on or around December 1, 2017 regarding an incident in which Student A failed to return to the classroom from recess;
 - c. Her actions toward Student A on or around January 24, 2018, when she and another teacher questioned Student A regarding peer-to-peer misconduct; and
 - d. Her actions on or around March 26, 2018, to have Student A's Special Education services delivery model changed.
2. Whether Respondent engaged in retaliatory actions toward you or Student A, in response to your participation in the Thornton Creek principal selection process.

District Human Resources Investigator Brett Rogers was assigned to conduct the investigation of the above-detailed legal issues pursuant to Policies 3210, 3207 and Superintendent Procedure 3210SP.B, 3207SP.A. These are the District's prohibitions against discrimination and HIB toward students and parents. In making determinations whether a policy violation occurred, the preponderance of evidence standard was used. According to this standard, when considering all of the evidence presented, the objective

is to determine whether the alleged policy violation(s) were more likely than not to have occurred.

With respect to Policy 3210, in order to establish that discriminatory harassment occurred, the preponderance of the evidence must show that an individual was subjected to unwelcome behavior due to an individual's membership in a protected class and a hostile educational environment resulted. Specifically, there must be sufficient evidence to establish that (1) there was harassing conduct, (2) the harassing conduct was based on a person's membership in a protected class and (3) the harassing conduct was severe, persistent, or pervasive such that it interfered with or limited the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the District.

School district policy 3207 defines harassing conduct, and states,

[It] is an intentional, electronic, written, verbal, or physical act that:

1. Physically harms a student or adult or damages the student's or adult's property; or
2. Has the effect of substantially interfering with a student's education or the adult's work environment; or
3. Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational or work environment; or
4. Has the effect of substantially disrupting the orderly operation of the school or work place.

Policy 3207 further states the conduct can take many forms, including slurs, demeaning comments, gestures, physical attacks, or threats, among other things. In determining whether conduct is sufficiently severe, an investigation considers all of the circumstances, including the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the parties; the setting and context in which the conduct occurred; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents sufficient to conclude that a hostile environment exists. Due to their position in a school setting, harassing conduct exhibited by a teacher may have a greater impact on students or parents than if the same conduct was exhibited by another student.

With respect to a finding of retaliation, there must be a preponderance of evidence to establish that an individual who had engaged in a protected activity was then subjected to adverse action of some type. Protected activity defined in District policy includes filing a complaint, referring a matter for investigation, participating in any manner in an investigation of a complaint, or advocating for legal rights or the legal rights of a student or an employee. The closer in time between an individual engaging in a protected activity and an adverse action, the higher the likelihood a finding of retaliation is supported.

Based on the investigative report, the District's determinations and corrective action, as necessary, are detailed below.

1.a. Regarding Respondent's actions toward Student A after his utterance of the "N-word" on or around October 12, 2017: You asserted that Respondent "berated" Student A and reduced "good behavior points" after he uttered the "N word." The investigation found that Respondent did admit to telling Student A, "You don't get points for using that word." This action was done before Respondent had conducted a complete inquiry of the incident. Respondent acknowledged as much to you and apologized in an email.

The investigation found that school staff took steps subsequent to this incident to develop a protocol to address racially-charged incidents. The District has determined that there is sufficient evidence to support a conclusion that Respondent failed to conduct a thorough inquiry before imposing corrective action against Student A (i.e. a reduction in his daily behavior points) for his utterance of the "N word." With respect to corrective action for this finding, the District has determined there were actions that occurred subsequent to this incident to remedy the situation. Specifically, Respondent apologized, and Thornton Creek staff developed a response protocol for addressing racially-charged incidents. At this time, the District is concluding this allegation as resolved.

1.b. Regarding Respondent's actions toward Student A when he failed to return to the classroom from recess on or around December 1, 2017: You asserted that Respondent did not fully investigate the reason for Student A's failure to return to class prior to reducing Student A's behavior points. The District has determined there is insufficient evidence to support a conclusion that Respondent harassed, intimidated, or bullied Student A with respect to this incident, as the evidence supports a finding that Student A inappropriately failed to return to class from recess and that this failure to return was not due to any physical restraint by another student. Any reduction in behavior points is more likely than not attributed to corrective action to address Student A's behavior rather than having been imposed with any discriminatory harassing or malicious intent.

1.c. Regarding your actions toward Student A and Complainant on or around January 24, 2018, when you and another staff member questioned Student A regarding an incident of student misconduct: The investigation found that the reason Respondent and another teacher were speaking with Student A was in response to an altercation between Student A and another student. Addressing peer-to-peer conflict is a responsibility that falls within the scope of authority granted to instructional staff to address and manage student behavior. The District has, therefore, determined that questioning Student A regarding his behavior does not constitute a violation of the nondiscrimination or HIB policy.

However, while it was appropriate for Respondent and the other teacher to speak with Student A regarding his conduct, the investigation also found that they required you to stay in the hallway while they were speaking with him. It was asserted in the investigation that the reason for this direction was that students in general may be more forthcoming when not in the presence of a parent/guardian. However, neither staff member identified any instances to support that assertion as applied to your son. That is, there was no reason given as to why Student A himself would be less honest if he had been questioned in the presence of his mother. Therefore, there was no basis to specifically exclude you from being present. Rather, the action to exclude you depicted an unwillingness to partner with you in addressing Student A's alleged misconduct. This runs counter to the proper application of the District disciplinary practices, as detailed in the District's "Students Rights and Responsibilities," to encourage family participation in the resolution of ongoing problems. The District has taken corrective action to address this issue with the relevant staff members. Due to state and federal employment laws, the specific corrective action taken with an employee cannot be disclosed to you.

The following combines both allegation 1.d., regarding Respondent's actions on or around March 26, 2018, to have Student A's Special Education services delivery model change; and 2. whether Respondent engaged in retaliatory actions toward Complainant or her son, Student A, in response to Complainant's participation in the Thornton Creek principal selection process: The investigation found that a meeting with Thornton Creek Site Council, a parent group associated with Thornton Creek, and Dr. Helen Joung occurred on March 15, 2018. The purpose of the meeting was to discuss the principal hiring process. The investigation established that you attended the March 15 meeting. While not invited, two Thornton Creek staff members were also in attendance. During the meeting, you shared details regarding the October 12 "N-word" incident to Dr. Joung, including providing Respondent's name as the Thornton Creek staff member involved. The investigation found that the Thornton Creek staff members in attendance at the March 15 meeting were unhappy with your disclosure to Dr. Joung.

The investigation also found that Respondent sent an email on March 26, 2018, to you and others recommending Student A be moved to a different Special Education service delivery model ("Access"). This email occurred two days after the first round of principal candidate interviews and within two weeks of the March 15 meeting detailed above. Respondent asserted in the email this recommendation was based on her awareness of, "an opening in the Access program and wanted to move quickly to secure the spot for [Student A]." While the investigation found significant documentation of your son's behavioral challenges, the investigation also found during that period of time documentation indicating he was also making positive progress to act in more positive manner; his parents would respond in a timely manner and partner with Respondent to address the behavioral concerns raised by also providing consequences in the home environment; and the Assistant Principal had identified peer behavior as triggering a negative behavioral response from Student A.

The investigation found that Respondent received an immediate admonishment and reminder from then-Assistant Principal Kristin Bailey in an email, which you were included as a recipient, to properly follow Special Education procedures.

Based on the above, with respect to the allegation of discriminatory harassment, I have determined that Respondent's recommendation to move Student A's Special Education placement does not constitute discriminatory harassment as there were legitimate non-discriminatory reasons she made the recommendation. Regarding the retaliation allegation, however, due to the nearness in time between the March 15 meeting and the March 26 email, this does give rise to a reasonable perception by you that Thornton Creek staff acted in concert to retaliate against your son for your disclosure during the March 15 meeting with Dr. Joung. The District has taken corrective action to address this issue with the relevant staff members. Due to state and federal employment laws, the specific corrective action taken with an employee cannot be disclosed to you.

On behalf of the District, I would like to express my apologies for the failure of District staff to follow certain procedures and guidelines as detailed above, and the negative impact those failures had toward your son and you.

Appeal Rights

If you disagree with the results of this investigation, you may appeal to the Superintendent by filling a written notice of appeal with the Superintendent on or before the 10th calendar day following the date upon which you receive this letter. This notice of appeal must include a brief statement explaining the basis for the appeal. The appeal will be considered received only when it contains such a statement. The appeal should be directed to the Superintendent at:

ATTN: Superintendent
Seattle Public Schools
MS 32-150
PO Box 34165
Seattle, WA 98124-1165
Email: superintendent@seattleschools.org

Student safety is of paramount importance to the District. If you or your student has any additional concerns about harassment, discrimination, or retaliation, please notify the Office of Student Civil Rights at oscr@seattleschools.org or (206) 252-0306.

Sincerely,



Clover Codd
Chief Human Resources Officer

cc: Equity & Civil Rights Office, Office of the Superintendent of Public Instruction
Stephen Nielsen, Deputy Superintendent
Tina Meade, Student Civil Rights Compliance Officer
Michael Starosky, Executive Director of Schools P-12
Helen Joung, Director of Schools
Jonathan Gaspar, Principal, Thornton Creek Elementary School
Patricia Campbell, Director, Special Education



April 5, 2019

Delivered via Certified and First-Class Mail and Email: penellis@gmail.com

Christina Ellis
3002 NE 89th St
Seattle, WA 98115

The purpose of this letter is to inform you that the Seattle School District ("District") has completed its investigation into your complaint that a number of Thornton Creek (TC) staff retaliated against you and Evan Briggs by causing your removal from TC Site Council after Kristin Bailey was not selected to be the next TC Principal. It was alleged that a number of Thornton Creek (TC) staff harassed, intimidated, bullied, and retaliated against the two of you. You filed the complaint on behalf of Ms. Briggs. As such she is copied on this response.

District Human Resources Investigator Brett Rogers ("Rogers") was assigned to investigate the allegations. Rogers conducted his investigation under the District's Prohibition of Harassment, Intimidation and Bullying (HIB) in the Workplace, Policy No. 5207 and 5207SP and the District's Anti-Retaliation Policy and Procedure 5245 and 5245SP.

Preliminarily, the District's Anti-Retaliation policy is not applicable as it only applies to employees. However, according to the District's HIB policy, HIB in the workplace refers to repeated and/or unreasonable actions of an individual (*or group*) directed towards an employee or volunteer (*or a group of employees or volunteers*) that is intended to intimidate, bully, degrade, or humiliate.

Upon review of this matter we have found that the actions of key staff have violated this policy. Staff's collective and coordinated actions are in violation of the District's HIB policy as they had the effect of substantially interfering with your work environment (as a volunteer) and disrupted the orderly operation of the work place. Staff's conduct is unbecoming of professionals representing the Seattle School District who are expected to model appropriate behaviors. On behalf of the District we apologize for their actions.

Please see the attached letter which will be sent to all Thornton Creek staff. With the letter to staff they are on notice that any further inappropriate and unprofessional actions will not be tolerated and will be subject to progressive discipline and/or adverse performance evaluation. We are also requiring specific training for all staff and recommending that the TC staff enter into a reconciliation process with families.

Respectfully,

Clover Codd
Chief Human Resource Officer

Enclosure: Policy 5207, 5245, 0030

cc: Evan Briggs
Michael Starosky, Executive Director of Schools P-12
Diane DeBacker, Chief Academic Officer
Katie Bishop, SEA Uniserve Representative